IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4947 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ANJU-NISHA HEAT TREATERS PVT. LTD. & 1 - Petitioner(s)

Versus

GUJARAT STATE FINANCIAL CORPORATION & 1 - Respondent(s)

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Appearance :

MR KM PATEL for Petitioner(s) : 1 - 2.
MR DAXESH T DAVE for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 16/01/2006

ORAL JUDGMENT

By way of this petition under Article 226 of the Constitution of India, the petitioners have prayed for an appropriate writ, direction or order quashing and setting aside the sale of the factory of the petitioners in favour of the respondent No.2. Similarly, the petitioners have also prayed for quashing and setting aside the

Notices dated 22.3.99 and 25.5.99 issued to the petitioners. It appears from the record that so far as the Notices dated 22.3.99 and 25.5.99 are concerned, they were with regard to auctioning the residential properties of the petitioners. It appears from the record that this Court initially issued the Notice and granted the Ad-interim relief on condition that petitioners shall deposit Rs.2 Lacs, which the petitioners did not deposit and therefore, by order dated 13th April, 2000, the Ad-interim relief, granted earlier, came to be vacated and this Court passed an order that it is open for the respondent-GSFC to put the residential properties of the petitioner No.2 to sale if they so choose for the purpose of recovery of the outstanding dues. The said order was passed by observing that even the aforesaid residential properties of the petitioner No.2 was pledged with the GSFC as collateral security. Even thereafter also further order came to be passed by another learned Single Judge of this Court dated 11.7.2000 vacating the Ad-interim relief. The aforesaid orders came to be passed in the year 2000 and today we are in the year 2006. The learned counsel appearing on behalf of the parties have no further instructions however, in view of the above, either the residential properties of the petitioner No.2

might have been auctioned and/or the petitioners must have approached the GSFC for settlement of the dispute. Even otherwise, in view of the fact that the residential properties of the petitioner No.2 was pledged with the GSFC as collateral security and after selling the factory if any further balance amount is to be recovered and the Notices came to be issued then it cannot be said that the same are in any way illegal and/or arbitrary. So far as prayer to set aside the sale of the factory of the petitioners in favour of the respondent No.2 is concerned, considering the affidavit-in-reply and considering the fact that the respondent No.2 has already now put to possession and/or must have been put to possession after vacating the Ad-interim relief, no further order is required to be passed qua that. The aforesaid observation will not come in the way of the petitioners if during the interregnum period and/or pendency of the present Special Civil Application, any settlement has entered into between the petitioners and the GSFC.

Rule is discharged. However, there will be no order as to costs.

(M.R.SHAH, J.)

kdc.